IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7339 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

ISHWERLALBHAI SHAMALJIBHAI AJMERA

Appearance:

Mr. LR Pujari AGP for Petitioner

MR BJ JADEJA for Respondent No. 1

RULE SERVED for Respondent No. 2, 3, 4, 5, 6, 7, 8, 9,10,11,12,13

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 19/09/2000

ORAL JUDGEMENT

Learned AGP Mr. Pujari has appeared for the petitioner-State of Gujarat. Learned advocate Mr.

Jadeja has appeared for the respondents. In this petition, rule has been issued by this court on 1.3.2000 and it was made returnable in September, 2000. However, while issuing the rule, no interim relief has been granted by this court. In this petition, the petitioner is challenging the order passed by the Gujarat Revenue Tribunal Ahmedabad in Revision Application No. Ten.BR.7 of 1995 dated 8.11.1996.

Learned AGP Mr. Pujari has submitted that the tribunal has set aside the order passed by the Collector, Rajkot District dated 29.3.1995, 5.4.95, wherein the COllector has decided that the respondents are not entitled to have the holding of the land in question in view of sec. 54 of the Saurashtra Gharkhed (Tenancy Settlement and Agricultural Lands) Ordinance, 1949 and, therefore, all the transactions subsequent thereto are unauthorized and as per sec. 75, the petitioner is having powers to remove the unauthorized occupants from the land in question and the land in question has vested in the Government. The COllector has also declared that all the transactions are considered as void ab-initio and, therefore, the possession of the land in question is unauthorized and, therefore, the collector has directed to survey the land in question and to initiate the proceedings.

Learned AGP Mr. Pujari has submitted that the tribunal has erred in considering the delay aspect. The tribunal has also erred in concluding that the respondents are agriculturists. He has further submitted that the tribunal has erred in concluding that there is no violation of sec.54 of the said Ordinance. He has also submitted that the tribunal has committed gross error in allowing the revision application. According to him, the tribunal ought to have rejected the revision while confirming the order passed by the collector.

The facts of the present petition, in brief, are that the respondents are agriculturists and their forefathers were also agriculturists. Head of the family namely Shamaljibhai has purchased agricultural lands in Orisa and, thereafter, he purchased the lands at village Vasavad, Taluka Gondal, District Rajkot in the year 1979. Necessary entries were made in the village patrak being entry no. 1633 dated 13.10.1979. The Collector, Rajkot initiated proceedings under sec. 54 and 75 of the said Ordinance of 1949 after the period of about 14 years and during the in intervening period, the respondent purchased various agricultural lands for the family. The head of the family Shamalji is having seven sons and all

are agriculturists. It is the defence of the respondents that sec.54 of the said Ordinance of 1949 has restricted transaction of the person who are not agriculturists but in proper case, the Collector has power to give him permission for such transaction. In any way, if any transaction has been arrived at between the parties without permission, same is considered to be invalid but cannot be held to be void ab initio and, therefore, according to the petitioners, the collector has committed gross error in considering the transaction as void ab initio.

I have heard the learned AGP Mr. Pujari for the petitioner as well as Mr. Jadeja, learned advocate for the respondents.

Learned advocate Mr. Jadeja has pointed out page 26, paragraph 17 and has submitted that the respondent was agriculturist and he was the head of the family. He has purchased the land in village Vasavad, Taluka Gondal, District : Rajkot. The said land was purchased by him on 13.10.1979 and the inquiry under section 54 and 75 the said Ordinance was initiated by the Collector on 24.10.1994 and, therefore, there was delay of about 14 years in initiating the said inquiry proceedings by the Collector. He has submitted that the Collector has, without considering this delay of 14 years in initiation of such proceedings, passed the orders which were adverse to the respondents and, therefore, the tribunal was justified in allowing the revision and quashing and setting aside the orders of the Collector impugned in the said revision. He has relied upon the decision of this Court in case of Evergreen Apartments versus Special Secretary, Revenue Department reported in 1991 (1) GLR page 113 and has submitted that the authority, while acting under the particular Act or enactment, though he may be having power to act in different Act, cannot exercise the very same power of different Act while initiating the inquiry under the particular enactment. Reliance has also been placed on the decision in case of State of Gujarat versus Patel Raghav Natha, 10 GLR page 992 as well as the decision in case of Mohamad Kavi Mohamad Amin versus Fatmabai Ibrahim reported in (1997) 6 SCC 71 and has submitted that where no time limit is prescribed for exercise of a power under a Statute, it does not mean that it can be exercised at any time but such power has to be exercised within a reasonable period. He has submitted that in the case before the apex court, sale of land had taken place in December, 1972 and suo motu inquiry started in September, 1973 and it was held that the the suo motu power under section 84C

has not been exercised within reasonable time. In this case, there is delay of about 14 years in initiating the inquiry and therefore, the tribunal was justified in considering the delay aspect while allowing the revision of the respondent.

I have considered the submissions made from both the sides. I have also perused the order of the Collector as well as the order passed by the tribunal in revision preferred by the respondent herein. The tribunal has, after taking into consideration the extent of delay, allowed the revision application by order dated 8.11.1996. Detailed reasons have been given by the tribunal for arriving at such a conclusion. The order passed by the tribunal is well reasoned order which has been passed after taking into consideration all the aspects and merits of the matter. The tribunal has passed the order on 8.11.1996 while the petitioners have filed this petition in the year 1998 and the petitioner has not explained even this delay also in filing of this petition.

This Court while exercising the powers under Article 226 and/or 227 of the Constitution of India, cannot act as an appellate authority as per the principles laid down by the apex court in case reported in 1998 (1) GLR 17 and 1998 AIR SCW 1840. Learned AGP Mr. Pujari for the petitioner has not been able to point out any infirmity and/or jurisdictional error committed by the tribunal while passing the impugned order. As per my view, the tribunal has rightly appreciated the evidence on record and has rightly passed the order in question which does not require any interference of this court in this petition under Article 226 / 227 of the Constitution of India. The tribunal was justified in considering delay aspect in initiating the proceedings under sec. 54 and 75 of the said Ordinance of 1949. Therefore, taking into consideration all these facts and circumstances of the case and the aspect of delay in initiation of the proceedings under sec.54 and 75 of the Ordinance of 1949, as per my view, no interference is called for by this court and therefore, this petition is required to be dismissed. Accordingly, this petition is dismissed. Rule is discharged. There shall be no order as to costs.

19.9.2000. (H.K. Rathod,J.)

Vyas